IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8308 OF 2004

Santosh Rampyare Upadyay ... Petitioner

Vs.

Ms. Padma Madhukar Bhakre ... Respondent

Mr. P.G. Kharat for the petitioner.

Ms. Seema Sarnaik for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 12TH APRIL, 2005.

P.C.:-

1. The petitioner is the original defendant. The respondent/plaintiff filed a suit for eviction of the defendant on the ground of non payment of arrears of rent and on the ground of permanent construction carried out without consent of the landlord. The trial court decreed the suit on both grounds. The lower appellate court confirmed the decree and, hence, this writ petition.

2. I have heard, at considerable length, Mr. Kharat, the learned counsel appearing for the petitioner. He contended that he had paid the rent by money order but, the plaintiff had not accepted it. He drew my attention to civil application filed by the petitioner being Civil Application No.721 of 2005 in this court and contended that from 1989, he has made payments regularly to the plaintiff and he is not a defaulter. I am unable to

agree with him. Both the courts below have concurrently held that the defendant has failed to pay arrears of rent for the period August, 1997 to May, 1999. The defendant had not filed the standard rent application. He has not raised any dispute about the standard rent. He has also not availed of the opportunity to deposit the entire arrears in court along with interest at 9% per annum on the first date of hearing of the suit. I am informed that from January, 2004 to December, 2004 also he has not deposited the arrears. In such circumstances, the courts below cannot be faulted for having passed the decree on the ground of arrears of rent.

3. So far as the permanent construction is concerned, admittedly, there is no written permission of the landlord. The defendant has constructed a lavatory and spent about Rs.70,000/- for that. Construction of this type inside the house would obviously need written permission of the landlord. If the written permission is not obtained then, a case falling under section 13(1)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "the Bombay Rent Act") is squarely made out. The learned counsel has relied on the judgment of the Supreme Court in **Ramji Purshotam (D) by LRs. & Ors. v. Laxmanbhai D. Kurlawala (D) by LRs. & Anr. 2004(5) ALL MR (S.C.) 693**; judgments of this court in **Alisaheb Abdul Latif Mulla v. Abdul Karim Abdul Rehman Mulla and others, 1981 Bom R.C. 278**; Pushpaben **Bhubatrai Kamdar v. Gordhandas Walchand Bhatia, 337 Bom.**

R.C. 1987 and the judgment of the Rajasthan High Court in **Sukhlal v. Bhopal Singh, 1973 All India Rent Control Journal 324.** Relying on these judgments, the learned counsel contended that if the construction is for beneficial enjoyment of the suit premises then, it does not come within the scope of section 13(1)(b) of the Bombay Rent Act. These judgments are not applicable to the facts of this case. The defendant has admitted that he had changed the place of window. He has admitted that he had spent Rs.70,000/-. His story that this amount was spent to repair a crack in the slab is rightly rejected by the courts below. His story that this construction is for beneficial enjoyment of the suit premises, does not appear to be true. Assuming that the construction is for the beneficial enjoyment of the suit premises, considering its nature, it was obligatory on the part of the tenant to take permission from the landlord and if he has not taken permission, he cannot be heard to say that the construction is for beneficial enjoyment of the suit premises and, therefore, it does not come within the scope of section 13(1)(b) of the Bombay Rent Act. No case is made out for interference. Hence, petition is rejected.

4. Connected civil application is also disposed of.

(SMT. RANJANA DESAI, J.)